

Page 1 of 2

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2007-1311-PWS-E    **TCEQ ID:** RN101209740    **CASE NO.:** 34427  
**RESPONDENT NAME:** Texas Department of Transportation

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input checked="" type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Hale County Comfort Station, Mile Marker 29, Interstate 27, Plainview, Hale County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on January 28, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney/SEP Coordinator:</b> Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Tel Croston, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5717; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171</p> <p style="margin-left: 20px;"><b>Respondent:</b> Mr. Randy Wood, RMS IV, Texas Department of Transportation, P.O. Box 148, Plainview, Texas 79073</p> <p style="margin-left: 20px;">Mr. Steven E. Simmons, P.E., Deputy Executive Director, Texas Department of Transportation, P.O. Box 148, Plainview, Texas 79073</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 7, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 7, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine records review.</p> <p><b>WATER</b></p> <p>1) Failed to maintain a minimum disinfectant residual of 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times. Specifically, on February 20, 21, and 23, 2007, the free chlorine residual was measured to be 0.0 mg/L when samples were taken at various locations within the Facility [30 TEX. ADMIN. CODE § 290.46(d)(2) and TEX. HEALTH &amp; SAFETY CODE § 341.0315(c)].</p> <p>2) Failed to provide water system records to Commission personnel at the time of the investigation [30 TEX. ADMIN. CODE § 290.46(f)(2)].</p>	<p><b>Total Assessed:</b> \$1,450</p> <p><b>Total Deferred:</b> \$290  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$1,160</p> <p><b>Total Paid to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin maintaining a minimum disinfection residual of 0.2 mg/L free chlorine throughout the distribution system at all times;</p> <p>b. Within 30 days after the effective date of this Agreed Order, begin maintaining water system records that can be made available for review by Commission personnel at the time of an investigation; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b.</p>

Additional ID No(s): PWS ID No. 0950066

**Attachment A**  
**Docket Number: 2007-1311-PWS-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Texas Department of Transportation</b>
<b>Payable Penalty Amount:</b>	<b>One Thousand One Hundred Sixty Dollars (\$1,160)</b>
<b>SEP Amount:</b>	<b>One Thousand One Hundred Sixty Dollars (\$1,160)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Wastewater Treatment Assistance</b>
<b>Location of SEP:</b>	<b>Hale County</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

**C. Minimum Expenditure**

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.



## **2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive  
Bryan, Texas 77802-2700

## **3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

## **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

## **5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.



**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.







# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

**TCEQ**  
**DATES**

Assigned 16-Jul-2007  
PCW 14-Aug-2007

Screening 13-Aug-2007 EPA Due

**RESPONDENT/FACILITY INFORMATION**

Respondent Texas Department of Transportation  
Reg. Ent. Ref. No. RN101209740  
Facility/Site Region 2-Lubbock Major/Minor Source Minor

**CASE INFORMATION**

Enf./Case ID No. 34427 No. of Violations 2  
Docket No. 2007-1311-PWS-E Order Type 1660  
Media Program(s) Public Water Supply Enf. Coordinator Thomas Barnett  
Multi-Media EC's Team EnforcementTeam 2  
Admin. Penalty \$ Limit Minimum \$50 Maximum \$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

Subtotal 1 \$850

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, &amp; 7 \$0

Notes No penalty adjustment based on compliance history.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer  
Extraordinary  
Ordinary  
N/A X (mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$628 0% Enhancement\* Subtotal 6 \$0  
Approx. Cost of Compliance \$1,100 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7**

Final Subtotal \$850

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

71%

Adjustment \$600

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Enhancement recommended for recovery of avoided costs of compliance.

Final Penalty Amount \$1,450

**STATUTORY LIMIT ADJUSTMENT**

Final Assessed Penalty \$1,450

**DEFERRAL**

20%

Reduction

Adjustment -\$290

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

**PAYABLE PENALTY**

\$1,160

Screening Date 13-Aug-2007

Docket No. 2007-1311-PWS-E

PCW

Respondent Texas Department of Transportation

Policy Revision 2 (September 2002)

Case ID No. 34427

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101209740

Media [Statute] Public Water Supply

Enf. Coordinator Thomas Barnett

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No penalty adjustment based on compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 13-Aug-2007 <b>Respondent</b> Texas Department of Transportation <b>Case ID No.</b> 34427 <b>Reg. Ent. Reference No.</b> RN101209740 <b>Media [Statute]</b> Public Water Supply <b>Enf. Coordinator</b> Thomas Barnett <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2007-1311-PWS-E <b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 26, 2007</i>																				
<b>Rule Cite(s)</b> 30 Tex. Admin. Code § 290.46(d)(2) and Tex. Health & Safety Code § 341.0315(c)																					
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				<b>Percent</b> <input type="text" value="0%"/>																	
Matrix Notes	<div style="border: 1px solid black; padding: 5px;">         If the water supply does not maintain proper levels of disinfection, customers of the water supply could be exposed to significant amounts of contaminants which would exceed levels that are protective of human health.       </div>																				
<b>Adjustment</b> <input type="text" value="\$750"/>																					
<input type="text" value="\$250"/>																					
<b>Violation Events</b>																					
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daily																					
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<b>Violation Base Penalty</b> <input type="text" value="\$750"/>																					
<div style="border: 1px solid black; padding: 5px;">         Three single events are recommended.       </div>																					
<b>Economic Benefit (EB) for this violation</b>																					
<b>Statutory Limit Test</b>																					
<b>Estimated EB Amount</b> <input type="text" value="\$600"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,279"/>																				
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,279"/>																					

**Economic Benefit Worksheet****Respondent** Texas Department of Transportation**Case ID No.** 34427**Reg. Ent. Reference No.** RN101209740**Media** Public Water Supply**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs****Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$600	20-Feb-2007	23-Feb-2007	0.0	\$0	\$600	\$600

**Notes for AVOIDED costs**

The avoided cost includes the amount for additional management and oversight that could have prevented the violations, calculated for the days in which the violations occurred.

**Approx. Cost of Compliance**

\$600

**TOTAL**

\$600

Screening Date 13-Aug-2007

Docket No. 2007-1311-PWS-E

PCW

Respondent Texas Department of Transportation

Policy Revision 2 (September 2002)

Case ID No. 34427

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101209740

Media [Statute] Public Water Supply

Enf. Coordinator Thomas Barnett

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.46(f)(2)

Violation Description

Failed to provide water system records to Commission personnel at the time of the investigation. Specifically, water system personnel were unaware of the requirements regarding records management and retention for public water supplies and failed to provide any records to Commission personnel on the date of the investigation.

Base Penalty \$1,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$900

\$100

## Violation Events

Number of Violation Events 1

39 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$100

One single event is recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$171

This violation Final Assessed Penalty (adjusted for limits) \$171

**Economic Benefit Worksheet**

Respondent Texas Department of Transportation

Case ID No. 34427

Reg. Ent. Reference No. RN101209740

Media Public Water Supply

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	20-Feb-2007	1-Apr-2008	1.1	\$28	n/a	\$28
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount to create and begin maintaining a record-keeping system for the public water supply, calculated from the date the violations were first documented to the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$28

# Compliance History

Customer/Respondent/Owner-Operator:	CN600803456	Texas Department of Transportation	Classification: AVERAGE	Rating: 3.26
Regulated Entity:	RN101209740	HALE COUNTY COMFORT STATION	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY WATER LICENSING	REGISTRATION LICENSE	0950066 0950066	
Location:	MILE MARKER 29, PLAINVIEW, TX, 79072			
TCEQ Region:	REGION 02 - LUBBOCK			
Date Compliance History Prepared:	December 27, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 03, 2002 to August 03, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Thomas Barnett	Phone:	713-767-3680	

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
 

1	09/23/2002	(10847)
2	10/12/2004	(336401)
3	03/15/2007	(539474)
4	07/10/2007	(566829)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A





# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TEXAS DEPARTMENT OF  
TRANSPORTATION  
RN101209740

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2007-1311-PWS-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas Department of Transportation ("TxDOT") under the authority of TEX HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and TxDOT appear before the Commission and together stipulate that:

1. TxDOT operates a motorist rest stop with a public water supply near mile marker 29 on Interstate 27, south of Plainview, Hale County, Texas (the "Facility").
2. The Commission and TxDOT agree that the Commission has jurisdiction to enter this Agreed Order, and that TxDOT is subject to the Commission's jurisdiction.
3. TxDOT received notice of the violations alleged in Section II ("Allegations") on or about July 12, 2007.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by TxDOT of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of One Thousand Four Hundred Fifty Dollars (\$1,450) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). One Thousand One Hundred Sixty Dollars (\$1,160) shall be conditionally offset by TxDOT's completion of a Supplemental Environmental Project ("SEP") and Two Hundred Ninety Dollars (\$290) is deferred contingent upon TxDOT's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If TxDOT fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require TxDOT to pay all or part of the deferred penalty.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.



7. The Executive Director of the TCEQ and TxDOT have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that TxDOT has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As operator of the Facility, TxDOT is alleged to have:

1. Failed to maintain a minimum disinfectant residual of 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during a record review conducted on July 7, 2007. Specifically, on February 20, 21, and 23, 2007, the free chlorine residual was measured to be 0.0 mg/L when samples were taken at various locations within the Facility.
2. Failed to provide water system records to Commission personnel at the time of the investigation, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(2), as documented during a record review conducted on July 7, 2007.

## **III. DENIALS**

TxDOT generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that TxDOT pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and TxDOT's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Texas Department of Transportation, Docket No. 2007-1311-PWS-E" to:



Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. TxDOT shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 5 above, One Thousand One Hundred Sixty Dollars (\$1,160) of the assessed administrative penalty shall be offset with the condition that TxDOT implement the SEP defined in Attachment A, incorporated herein by reference. TxDOT's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that TxDOT shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin maintaining a minimum disinfection residual of 0.2 mg/L free chlorine throughout the distribution system at all times, as required by 30 TEX. ADMIN. CODE § 290.46;
  - b. Within 30 days after the effective date of this Agreed Order, begin maintaining water system records that can be made available for review by Commission personnel at the time of an investigation, in accordance with 30 TEX. ADMIN. CODE § 290.46; and
  - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a and 3.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:



Water Section Manager  
Lubbock Regional Office  
Texas Commission on Environmental Quality  
5012 50th Street, Suite 100  
Lubbock, Texas 79414-3421

4. The provisions of this Agreed Order shall apply to and be binding upon TxDOT. TxDOT is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by TxDOT shall be made in writing to the Executive Director. Extensions are not effective until TxDOT receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against TxDOT in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to TxDOT, or three days after the date on which the Commission mails notice of the Order to TxDOT, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

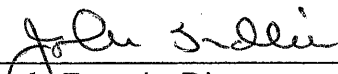




## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director


2/20/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

11-29-07  
Date

STEVEN E. SIMMONS, P.E.  
Name (Printed or typed)  
Authorized Representative of  
Texas Department of Transportation

DEPUTY EXECUTIVE DIRECTOR  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.



Attachment A  
Docket Number: 2007-1311-PWS-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	Texas Department of Transportation
<b>Payable Penalty Amount:</b>	One Thousand One Hundred Sixty Dollars (\$1,160)
<b>SEP Amount:</b>	One Thousand One Hundred Sixty Dollars (\$1,160)
<b>Type of SEP:</b>	Pre-approved
<b>Third-Party Recipient:</b>	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Wastewater Treatment Assistance
<b>Location of SEP:</b>	Hale County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

**C. Minimum Expenditure**

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.



**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.



**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

